



and high readings of lead exposure due to factors of his federal employment. He stated that he had been a firearms instructor for 11 years, and in this capacity, he was exposed to loud and continuous noise from firearms. Appellant did not submit supporting documentation with his claim.

By letter dated September 26, 2012, OWCP requested additional factual and medical evidence from appellant and to respond to its inquiries regarding his duties and facts surrounding his condition. It afforded him 30 days to submit this additional evidence. OWCP also requested that the employing establishment respond to its inquiries regarding appellant's duties and facts surrounding his condition.

By letter dated October 21, 2012, the employing establishment stated that the source of exposure to noise was gunfire from three types of guns, which ranged between 155.5 decibels (dB) and 161.50 dB, for four hours per day and five days per week. It also noted that earplugs and earmuffs were provided and worn by instructors and participants, and that appellant was last exposed to hazardous noise on October 19, 2012. The employing establishment stated that appellant was no longer exposed to hazardous noise as part of his job.

By letter dated December 17, 2012, appellant described his duties as a firearms instructor. He stated that he was first assigned as a firearms instructor for the United States Immigration Service in April 1999. Appellant noted that he was exposed to loud continuous noise from handguns, shotguns and rifles for four hours per day and five days a week in the performance of his duties, and alleged exposure to the same range of decibels as described by the employing establishment. He also stated that his ear protection included earplugs and earmuffs.

Appellant submitted audiogram results from employing establishment evaluations performed from March 2, 2005 through June 25, 2012. Audiometric testing obtained on June 25, 2012 revealed the following: right ear 35, 30, 35, and 30 dB, left ear 35, 40, 35, and 30 dB.

By letter dated December 20, 2012, OWCP referred appellant to Dr. James T. Wright, Jr., a Board-certified otolaryngologist, for measurements of appellant's current hearing acuity. With its second opinion referral, it included a statement of accepted facts regarding appellant's federal and nonfederal employment history.

In a second opinion report dated February 6, 2013, Dr. Wright reviewed appellant's history of exposure to hazardous noise, responded to OWCP's inquiries and performed an otologic evaluation. Audiometric testing obtained by Charles Butler, M.A., on February 6, 2013 at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps) revealed the following: right ear 40, 40, 40, and 45 dB; left ear 40, 40, 35, and 40 dB. Mr. Butler noted that the testing occurred at February 6, 2013 at 11:10 a.m., and the time of appellant's last exposure to loud noise was at least 16 hours before the examination. He also noted that the audiological equipment was last calibrated on October 11, 2012. Dr. Wright determined that appellant sustained mild-to-moderate binaural sensorineural hearing loss, as well as tinnitus. He found that the sensorineural hearing loss was due to noise exposure in appellant's federal employment, because the pattern of appellant's audiogram was consistent with noise exposure. Dr. Wright also stated that hearing aids were recommended for appellant.

By decision dated March 22, 2013, OWCP accepted appellant's claim for binaural sensorineural hearing loss and stated that appellant's case had been forwarded to an OWCP medical adviser in order to assess the percentage of permanent employment-related hearing loss.

On March 25, 2013 a district medical adviser calculated that, under the sixth edition, A.M.A., *Guides*, appellant had 26 percent ratable binaural hearing loss. The district medical adviser further concluded that noise exposure in the course of appellant's federal employment was sufficient to implicate it as a factor in appellant's hearing loss and that hearing aids should be authorized.

On April 2, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award on the basis of his accepted claim for binaural sensorineural hearing loss.

By decision dated April 18, 2013, OWCP accepted appellant's claim for a schedule award for a 26 percent binaural hearing loss. The award ran for 52 weeks from February 6, 2013 to February 4, 2014. OWCP based the award on Dr. Wright's February 6, 2013 report and the March 25, 2013 district medical adviser's report. It also authorized hearing aids for appellant.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing regulations<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>4</sup> The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 cps, the losses at each frequency are added up and averaged. Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> See *D.K.*, Docket No. 10-174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>5</sup> 20 C.F.R. § 10.404; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010).

<sup>6</sup> See A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>7</sup>

Further, the requirements of the evidence to be used in evaluating occupational hearing-loss claims are defined by the Federal (FECA) Procedure Manual, which provides: that the employee should undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include the date and hour of examination; date and hour of the employee's last exposure to loud noise; and a rationalized medical opinion regarding the relationship.<sup>8</sup>

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.<sup>9</sup> The A.M.A., *Guides* state that, if tinnitus interferes with activities of daily living (ADLs), including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well being, up to five percent may be added to a measurable binaural hearing impairment.<sup>10</sup>

### ANALYSIS

The Board finds that the evidence of record does not establish that appellant is entitled to a schedule award for more than 26 percent binaural hearing loss.

OWCP's district medical adviser correctly interpreted Dr. Wright's report in calculating appellant's ratable hearing loss. Dr. Wright's audiometric testing report of February 6, 2013 comports with established OWCP procedure, while the audiogram results from examinations performed from March 2, 2005 through June 25, 2012 do not.

Appellant's claim for occupational hearing loss was accepted by OWCP based on the report of Dr. Wright, and OWCP's medical adviser properly applied OWCP's standardized procedures to Dr. Wright's February 6, 2013 report to arrive at an impairment rating of 26 percent. Test results for the frequency levels recorded at 500, 1,000, 2,000, and 3,000 cps on the right revealed decibel losses of 40, 40, 40, and 45 dB respectively, for a total of 165 dB. This figure, when divided by four, results in an average hearing loss of 41.25 dB. The average of 41.25 dB, when reduced by the 25 dB fence and multiplied by 1.5, results in a 24.38 percent

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<sup>7</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

<sup>8</sup> *Joshua A. Holmes*, 42 ECAB 231, 232 n.2 (1990).

<sup>9</sup> See A.M.A., *Guides* 249 (6<sup>th</sup> ed. 2009).

<sup>10</sup> *Id.* See also *R.O.*, Docket No. 13-1036 (issued August 28, 2013); *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570 (2004).

monaural hearing loss of the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 40, 40, 35, and 40 respectively, for a total loss of 155 dB; 155 dB divided by four results in an average of 38.75 dB, which when reduced by the 25 dB fence and multiplied by 1.5, results in a 20.63 percent monaural hearing loss of the left ear. Multiplying the lesser loss of 20.63 dB by five arrives at a product of 103.15 dB. Adding the 103.13 figure to the 24.38 percent hearing loss for the right ear obtains a total of 127.53 dB. Dividing this total by six in order to calculate a binaural hearing loss yields 21.26 percent, which was rounded down to 21 percent binaural hearing loss.<sup>11</sup> Adding five percent to appellant's impairment due to tinnitus, as recommended by Dr. Wright, results in a final figure of 26 percent binaural hearing loss. Therefore, the district medical adviser correctly interpreted Dr. Wright's report in calculating appellant's ratable hearing loss.

Dr. Wright's audiometric testing was performed in full compliance with OWCP standards and procedures. Appellant underwent an otological examination by Dr. Wright and an audiometric examination by Mr. Butler. The audiological testing preceded the otologic examination, and both Dr. Wright and Mr. Butler were certified.<sup>12</sup> The audiological equipment was calibrated recently, on October 11, 2012; and the results of the audiological examination included bone conduction, pure-tone air conduction thresholds, speech reception thresholds, and monaural discrimination scores. Furthermore, the audiology report contained the date and hour of examination, that of February 6, 2013 at 11:10 a.m., and the date of hour of appellant's last exposure to loud noise, that of at least 16 hours before the examination. Finally, Dr. Wright provided a rationalized medical opinion regarding the relationship between the work factors alleged to have caused appellant's hearing loss and appellant's ratable hearing loss, that of finding that the sensorineural hearing loss was due to noise exposure in appellant's federal employment, because the pattern of appellant's audiogram was consistent with noise exposure. Therefore, Dr. Wright's report met all OWCP standards and procedures and is probative on the issue of appellant's ratable binaural hearing loss.

The audiogram results from examinations performed from March 2, 2005 through June 25, 2012, do not contain the results of an otologic examination, the legible names of a certified physician and audiologist, the date of last calibration of the audiological equipment, the date and hour of appellant's last exposure to loud noise, or a rationalized medical opinion regarding the relationship between the work factors alleged to cause appellant's hearing loss and appellant's ratable hearing loss.<sup>13</sup> Therefore, these audiogram results are not probative on the

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<sup>11</sup> OWCP's procedures provide that in computing binaural hearing loss, percentages should not be rounded until the final percent for award purposes is obtained and fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b(2)(b) (March 2005). It is also well established that, if calculations based on the monaural loss for each ear would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used. *Reynaldo R. Lichtenberger*, 52 ECAB 462, 464 (2001). In this case, appellant's compensation is greater under the procedures used for calculating binaural loss.

<sup>12</sup> Dr. Wright is certified by the American Board of Medical Specialties as an otolaryngologist. Mr. Butler is licensed by the state of Texas and enrolled as a member of the American Speech and Hearing Association, the Texas Academy of Audiology and the Texas Hearing Aid Association.

<sup>13</sup> Furthermore, the audiogram results from examinations performed from March 2, 2005 through June 25, 2012 each indicate a lower level of hearing loss than the level indicated by Dr. Wright's February 6, 2013 report.

issue of whether appellant is entitled to a higher percentage rating of impairment for binaural hearing loss, and consequently there is no medical evidence of record that would indicate appellant is entitled to a greater schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

**CONCLUSION**

The Board finds that OWCP followed standardized procedures in evaluating appellant's hearing loss and properly issued a schedule award for 26 percent binaural impairment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2013 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board